

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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MAILED

JUL 27 2007

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte DONALD E. MABE JR., and KARL E. ELLIOTT

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Application No. 10/680,535

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on July 25, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below.

A review of the application indicates that the Evidence appendix and Related proceedings appendix sections are missing from the appeal brief filed November 18, 2005. Therefore, the appeal brief does not comply with all the requirements of 37 C.F.R. § 41.37(c).

37 C.F.R. § 41.37(c) states:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

MPEP 1205.03 states in part.

If the evidence appendix and related proceedings appendix are missing, but the record is clear that there is no evidence submitted and no related proceedings listed in the related appeals and interferences section, the examiner may accept the brief and state in the examiner's answer that it is assumed that the appellant meant to include both appendixes with a statement of "NONE."

Accordingly, it is

**ORDERED** that the application is returned to the Examiner to:

- 1) either hold the appeal brief of November 18, 2005, defective; and request Appellants to file a supplemental appeal brief in compliance with 37 C.F.R. § 41.37; Or
- 2) mail a PTOL-90 accepting the Brief and state in the paper that it is assumed that the appellant meant to include both appendixes with a statement of "NONE."

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Application No. 10/680,535

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